

**CONFERENCE COMMITTEE REPORT
DIGEST FOR EHB 1003**

Citations Affected: IC 4-2-6-4.3; IC 4-12-1-10; IC 4-13.6-5-8; IC 4-15-1.5-5; IC 5-1.5-2-2.5; IC 5-2-6-16; IC 5-10.5-3-9; IC 5-13-12; IC 5-14; IC 5-15-5.1-1; IC 21-9-4-5; IC 21-22-3-5; IC 21-25-3-8; IC 21-27-2-2; IC 22-4-18.1-6.5; IC 25-1-14; IC 25-37.5-1; IC 28-11-1-9.1; IC 31-26-6-13; 35IC 34-30-2.

Synopsis: Public access issues. Conference committee report for EHB 1003. Allows a member of the governing body of any public agency of the state to participate in a meeting of the governing body by electronic communication only if: (1) the meeting meets all other requirements of the open door law; and (2) a majority of the governing body adopts a policy regarding the use of meetings by electronic communication. Provides that if a meeting by electronic communication is conducted, the governing body is required to: (1) have the greater of two members or one-third of the governing body physically present at the meeting place; and (2) take only roll call votes. Provides that unless a policy adopted by the governing body provides otherwise, a member who participates in a meeting by electronic communication: (1) is considered to be present at the meeting; (2) must be counted for purposes of establishing a quorum; and (3) may vote at the meeting. Requires each member of the governing body to physically attend at least one meeting annually. Specifies that a governing body may adopt a policy that allows the public to attend meetings conducted by electronic communication at a public place and where a member is physically present and participates by electronic communication, excluding executive sessions. Requires a governing body to post the governing body's electronic meeting policy on the Internet web site of the governing body or public agency. Specifies that the electronic meeting law does not affect a governing body's right to exclude the public from an executive session conducted by electronic communication. Repeals the individual statutory authorizations for the following state entities to have meetings by electronic communication: (1) State ethics commission. (2) Indiana bond bank board of directors. (3) Indiana public retirement system board of trustees. (4) Board for depositories. (5) Education savings authority board of directors. (6) State board of trustees or a committee of the state board of trustees of Ivy Tech Community College of Indiana, Vincennes University, Ball State University, Indiana State University, Indiana University, Purdue University, and University of Southern Indiana. (7) Commission for higher education. (8) State workforce innovation council. (9) Boards, committees, or commissions administered by the professional licensing agency. (10) Department of financial institutions governing board. (11) Regional services council. Changes the number of annual meetings the following state entities are required to conduct: (1) The state

budget committee. (2) The state employees appeals commission. (3) The board for depositories. (4) The commission for a drug free Indiana. Adds electronic media to the definition of "record" for purposes of the public records law. Eliminates a requirement that the public works division of the department of administration solicit sealed bids for public works projects by sending notices by mail and posting notices on a bulletin board in the agency's office. Requires the state police department to publish the following on the state police Internet web site: (1) The forms to be used by valuable metal dealers when purchasing valuable metal. (2) A list that describes valuable metal products that are particularly susceptible to theft. (3) The statutes and rules adopted by the superintendent of the state police department concerning the regulation of valuable metal dealers. Requires a public agency to: (1) allow inspection or copying; or (2) make copies; of a public record within a reasonable time after the request is received by the agency. Provides that a court may impose a civil penalty against: (1) an officer of a public agency or an individual employed in a management level position with a public agency; or (2) the public agency; for violating the open door law with specific intent to violate the law if the plaintiff obtained an advisory opinion from the public access counselor before filing an action. Provides that a court may impose a civil penalty against an officer, management level employee, or the public agency for violating the public records law if the officer, management level employee, or agency: (1) continues to deny a request for a public record after the public access counselor has issued an advisory opinion that instructs the agency to allow access to the public record; and (2) denies the request with the specific intent to unlawfully withhold a public record that is subject to disclosure. Provides that an individual or agency could be subject to a civil penalty if the individual intentionally charges a copying fee that the individual knows exceeds the amount set by statute, fee schedule, ordinance, or court order. Provides that a court may not impose a civil penalty unless the public access counselor has issued an advisory opinion that instructs the public agency to allow access to the public record before the lawsuit is filed. Provides that it is a defense to the imposition of a civil penalty under this section for a violation of the open door law or public records law if the individual acted in reliance on an opinion of the public agency's legal counsel or an opinion of the attorney general. Provides that a court may impose a civil penalty of: (1) not more than \$100 for the first violation; and (2) not more than \$500 for any additional violations. Provides that a court may: (1) impose only one civil penalty against an individual in an action even if the court finds that the individual committed multiple violations; and (2) impose another civil penalty against the individual in a separate action. Provides that if an officer of a state or local government agency orders a management level employee to: (1) not give proper notice of a public meeting or executive session; or (2) deny or interfere with a person's request to inspect or copy a public document; the employee is not subject to a civil penalty for violating the statute. Provides that the civil penalty provisions imposed for violation of the public records law does not apply to any matter regarding the work product of legislative services agency or the individual members and partisan staffs of the general assembly. Provides that if the governing body of a local government agency adopts a policy, the agency shall provide notice to anyone (other than news media) that makes an annual request for notice by: (1) transmitting the notice by electronic mail; or (2) posting the notice on the agency's Internet web site (if the agency has an Internet web site). Provides that a court may not declare a governmental action void for failure to give notice by electronic mail or posting on the local government agency's web site if the agency made a good faith effort to comply with the statute. Provides that a public agency may withhold personal information from public disclosure regarding an individual less than 18 years of age who participates in an activity conducted or supervised by a state educational institution, including personal information regarding the individual's parent or guardian. Requires (rather than allows) a court to review public records in camera to determine whether redaction of the records violates the public records act. Creates an education fund for a program administered by the public access counselor to train public officials and educate the public on the rights of the public and the responsibilities of public agencies under the public access laws. Provides that a public agency has discretion as to whether to disclose a public record requested by an offender containing personal information relating to a judge, law enforcement officer, or family member of a judge or law enforcement officer. **(This conference committee report resolves a conflict with HEA 1239-2012 and SEA 26-2012. This conference committee report: (1) provides**

that a governing body of a local government agency is not required to provide notice electronically unless the governing body adopts a policy; and (2) provides that the provisions imposing civil penalties for failing to comply with the open records act does not apply to matters regarding the work product of legislative services agency or the general assembly. This conference committee report inserts the contents of HB 1093 which does the following: (1) Establishes civil penalties and defenses for officers and management level employees of public agencies who fail to comply with public access provisions. (2) Allows a local government agency to send meeting notices by electronic mail. (3) Allows a public agency to withhold personal information regarding an individual less than 18 years of age who participates in an activity conducted or supervised by a state educational institution. (4) Requires a court to review redacted public records in camera. (5) Creates a fund for an education program administered by the public access counselor. (6) Allows a public agency to withhold a public personal information relating to a judge, law enforcement officer, or family member of a judge or law enforcement officer.)

Effective: July 1, 2012; January 1, 2013.

CONFERENCE COMMITTEE REPORT

MR. SPEAKER:

Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed Senate Amendments to Engrossed House Bill No. 1003 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause, begin a new paragraph
2 and insert the following:
3 SECTION 1. IC 4-2-6-4.3, AS ADDED BY P.L.89-2006, SECTION
4 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY
5 1, 2013]: Sec. 4.3. (a) ~~This section applies to a commission meeting at~~
6 ~~which at least three (3) members of the commission are physically~~
7 ~~present at the place where the meeting is being conducted. The~~
8 ~~commission may not conduct a hearing under section 4(b)(2)(G) of this~~
9 ~~chapter under this section. **by using electronic communication under**~~
10 **IC 5-14-1.5-3.6.**
11 (b) ~~A commission member may participate in a commission meeting~~
12 ~~by using a means of communication that permits:~~
13 (1) ~~all other commission members participating in the meeting;~~
14 ~~and~~
15 (2) ~~all members of the public physically present at the place~~
16 ~~where the meeting is being conducted;~~
17 ~~to communicate simultaneously with each other during the meeting.~~
18 (c) ~~A commission member who participates in a meeting under~~
19 ~~subsection (b) is considered to be present at the meeting.~~
20 (d) ~~A commission member who participates in a meeting under~~
21 ~~subsection (b) may act as a voting member on official action only if at~~
22 ~~least two (2) commission members physically present at the place~~

1 where the meeting is being conducted concur in the official action.

2 (e) The memoranda of the meeting prepared under IC 5-14-1.5-4
3 must also state the name of each member who:

4 (1) was physically present at the place where the meeting was
5 conducted;

6 (2) participated in the meeting by using a means of
7 communication described in subsection (b); or

8 (3) was absent.

9 (f) A commission member who participates in a meeting under
10 subsection (b) may not cast the deciding vote on any official action.

11 SECTION 2. IC 4-12-1-10 IS AMENDED TO READ AS
12 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 10. The budget
13 committee shall meet at least once during the two (2) ~~months~~ **month**
14 period after adjournment of each regular session of the general
15 assembly sine die ~~except that beginning with July the committee shall~~
16 ~~meet at least once each month~~; and upon call of the chairman. The
17 committee shall fix the time and place for such meetings.

18 SECTION 3. IC 4-13.6-5-8, AS AMENDED BY P.L.177-2005,
19 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
20 JULY 1, 2012]: Sec. 8. (a) This section applies only to public works
21 contracts bid under section 2 of this chapter.

22 (b) The division shall solicit sealed bids by public notice inserted
23 once each week for two (2) successive weeks before the final date of
24 submitting bids in:

25 (1) one (1) newspaper of general circulation in Marion County,
26 Indiana; and

27 (2) if any part of the project is located in an area outside Marion
28 County, Indiana, one (1) newspaper of general circulation in that
29 area.

30 The commissioner shall designate the newspapers for these
31 publications. The commissioner may designate different newspapers
32 according to the nature of the project and may direct that additional
33 notices be published.

34 (c) The division shall also solicit sealed bids for public works
35 projects by ~~(1) sending notices by mail to prospective contractors~~
36 ~~known to the division; (2) posting notices on a public bulletin board in~~
37 ~~its office; and (3) providing electronic access to notices through the~~
38 computer gateway administered by the office of technology established
39 by IC 4-13.1-2-1 at least seven (7) days before the final date for
40 submitting bids for the public works project.

41 SECTION 4. IC 4-15-1.5-5, AS AMENDED BY P.L.178-2006,
42 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
43 JULY 1, 2012]: Sec. 5. The commission shall meet in rooms provided
44 by the personnel department and assume the duties of office. Three (3)
45 members of the commission shall constitute a quorum for the
46 transaction of business, and a majority of votes cast shall be required
47 for the adoption or approval of any official action. The commission
48 shall elect one (1) of the members as the chairman and another member
49 as vice-chairman and the persons so elected shall hold office for one
50 (1) year and until their successors are elected and qualified. The

1 commission shall hold **at least one (1) annual meeting and** such
 2 regular and special meetings **each year as needed** as it **the commission**
 3 may prescribe by rule ~~or resolution shall meet on or upon~~ the call of
 4 the chairman. ~~and shall hold at least one (1) meeting each month.~~

5 SECTION 5. IC 5-1.5-2-2.5 IS REPEALED [EFFECTIVE
 6 JANUARY 1, 2013]. Sec. 2.5: (a) This section applies to a meeting of
 7 the board at which at least four (4) members of the board are physically
 8 present at the place where the meeting is conducted:

9 (b) ~~A member of the board may participate in a meeting of the board
 10 by using a means of communication that permits:~~

11 (1) ~~all other members participating in the meeting; and~~

12 (2) ~~all members of the public physically present at the place
 13 where the meeting is conducted;~~

14 ~~to simultaneously communicate with each other during the meeting.~~

15 (c) ~~A member who participates in a meeting under subsection (b) is
 16 considered to be present at the meeting.~~

17 (d) ~~The memoranda of the meeting prepared under IC 5-14-1.5-4
 18 must also state the name of each member who:~~

19 (1) ~~was physically present at the place where the meeting was
 20 conducted;~~

21 (2) ~~participated in the meeting by using a means of
 22 communication described in subsection (b); and~~

23 (3) ~~was absent.~~

24 SECTION 6. IC 5-2-6-16, AS AMENDED BY P.L.44-2006,
 25 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 26 JULY 1, 2012]: Sec. 16. (a) As used in this chapter, "local coordinating
 27 council" means a countywide citizen body approved and appointed by
 28 the commission for a drug free Indiana to plan, monitor, and evaluate
 29 comprehensive local alcohol and drug abuse plans.

30 (b) The commission for a drug free Indiana is established (referred
 31 to in this section as "commission"). The criminal justice institute may
 32 adopt rules under IC 4-22-2 to administer the commission. The
 33 commission must consist of twenty (20) members described under
 34 subsections (d) and (e) who have distinguished themselves in their
 35 respective fields and who have experience or an interest in attempting
 36 to eliminate alcohol and other drug abuse in Indiana.

37 (c) The commission's purpose is to improve the coordination of
 38 alcohol and other drug abuse efforts at both the state and local levels
 39 in an effort to eliminate duplication of efforts while ensuring that
 40 comprehensive alcohol and other drug programs are available
 41 throughout Indiana. The commission's responsibilities include the
 42 following:

43 (1) Establishing an interagency council on drugs to coordinate the
 44 alcohol and other drug education, prevention, treatment, and
 45 justice programming and funding responsibilities of state
 46 agencies, commissions, and boards including the approval of
 47 alcohol and other drug plans and funding applications by state
 48 agencies, commissions, and boards.

49 (2) Coordinating the collection of data concerning alcohol and
 50 other drug abuse and the needs, programming, and effectiveness

- 1 of state supported programs and services.
- 2 (3) Maintaining a system of support to assist local coordinating
- 3 councils with technical assistance, guidance, or direct funding
- 4 resources.
- 5 (4) Continuing to assist the development of local coordinating
- 6 councils to identify community drug programs, coordinate
- 7 community initiatives, design comprehensive, collaborative
- 8 community strategies, and monitor anti-drug activities at the local
- 9 level.
- 10 (5) Establishing roles, responsibilities, and performance standards
- 11 for the local coordinating councils.
- 12 (6) Recommending to the governor and general assembly long
- 13 and short range goals, objectives, and strategies, including
- 14 legislative proposals to be implemented on the state and local
- 15 level to reduce drug abuse.
- 16 (7) Assisting local communities in the development of citizen
- 17 based drug related crime control efforts.
- 18 (d) The commission must be comprised of the following voting
- 19 members:
- 20 (1) The governor or the governor's designee.
- 21 (2) Fifteen (15) members appointed by the governor for a two (2)
- 22 year term, who have experience or expertise in at least one (1) of
- 23 the following areas:
- 24 (A) Family relations.
- 25 (B) Religion.
- 26 (C) Education.
- 27 (D) Civic or private organizations.
- 28 (E) Business.
- 29 (F) Media.
- 30 (G) Drug treatment.
- 31 (H) Medicine.
- 32 (I) Local government.
- 33 (J) Judiciary.
- 34 (K) Law enforcement.
- 35 (L) Self-help organizations.
- 36 (M) Youth.
- 37 (N) A representative of the interagency council against drugs
- 38 established under subsection (c)(1).
- 39 (O) Labor.
- 40 (e) Four (4) members of the general assembly shall serve as
- 41 nonvoting members of the commission. The president pro tempore of
- 42 the senate shall appoint two (2) senators, both of whom may not be
- 43 members of the same political party. The speaker of the house of
- 44 representatives shall appoint two (2) representatives, both of whom
- 45 may not be members of the same political party.
- 46 (f) The governor or the governor's designee shall serve as the
- 47 chairman of the commission.
- 48 (g) The commission shall meet ~~one (1) time per month~~ **quarterly or**
- 49 at the call of the chairman.
- 50 (h) Eight (8) voting members of the commission constitute a

1 quorum. The commission is not prohibited from conducting business
 2 as a result of a vacancy in the commission. In the case of a vacancy, a
 3 new appointee shall serve for the remainder of the unexpired term. A
 4 vacancy shall be filled from the same group that was represented by the
 5 outgoing member.

6 (i) All appointments of the commission's members are renewable.

7 (j) A member of the commission who is not a state employee is not
 8 entitled to a minimum salary per diem provided by IC 4-10-11-2.1(b).
 9 The member is, however, entitled to reimbursement for traveling
 10 expenses and other expenses actually incurred in connection with the
 11 member's duties, as provided in the state travel policies and procedures
 12 established by the Indiana department of administration and approved
 13 by the budget agency.

14 (k) A member of the commission who is a state employee is entitled
 15 to reimbursement for traveling expenses and other expenses actually
 16 incurred in connection with the member's duties, as provided in the
 17 state travel policies and procedures established by the Indiana
 18 department of administration and approved by the budget agency.

19 SECTION 7. IC 5-10.5-3-9 IS REPEALED [EFFECTIVE
 20 JANUARY 1, 2013]. Sec. 9: (a) This section applies to any meeting of
 21 the board:

22 (b) A member of the board may participate in a meeting of the board
 23 using any means of communication that permits:

24 (1) all other board members participating in the meeting; and

25 (2) all members of the public physically present at the place
 26 where the meeting is conducted;

27 to simultaneously communicate with the member during the meeting.

28 (c) A member of the board who participates in a meeting under
 29 subsection (b) is considered to be present at the meeting:

30 (d) The memorandum of the meeting prepared under IC 5-14-1.5-4
 31 must also state the name of each member who:

32 (1) was physically present at the place where the meeting was
 33 conducted;

34 (2) participated in the meeting using a means of communication
 35 described in subsection (b); or

36 (3) was absent.

37 SECTION 8. IC 5-13-12-2, AS AMENDED BY P.L.115-2010,
 38 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 39 JULY 1, 2012]: Sec. 2. (a) The board for depositories consists of the
 40 governor, the treasurer of state, the auditor of state, the chairperson of
 41 the department of financial institutions, the chief examiner of the state
 42 board of accounts, and four (4) appointed members. For appointments
 43 after June 30, 2010, one (1) member shall be appointed by the speaker
 44 of the house of representatives, one (1) member shall be appointed by
 45 the president pro tempore of the senate, and two (2) members shall be
 46 appointed by the governor. All appointed members must be residents
 47 of Indiana. The speaker of the house of representatives shall make the
 48 appointment to fill the first vacancy on the board, and the president pro
 49 tempore of the senate shall make the appointment to fill the second
 50 vacancy on the board that occurs after June 30, 2010. In making the

1 governor's two (2) appointments, the governor shall assure that no more
 2 than two (2) of the four (4) appointees identify with the same political
 3 party. For appointments after June 30, 2010, all four (4) appointed
 4 members must be a chief executive officer or a chief financial officer
 5 of a depository at the time of the appointment if the depository is
 6 domiciled in Indiana. If the depository is not domiciled in Indiana, the
 7 appointee must be the most senior corporate officer of the depository
 8 with management or operational responsibility, or both, or the person
 9 designated to manage public funds for the depository that is located in
 10 Indiana. In making the governor's appointments, the governor shall
 11 provide for geographic representation of all regions of Indiana,
 12 including both urban and rural communities. In addition, the appointees
 13 must, at the time of the appointment, be employed by the following
 14 depositories:

15 (1) One (1) member appointed by the governor who must be the
 16 chief executive officer or the chief financial officer of a
 17 depository that is a state chartered credit union.

18 (2) One (1) member appointed by the governor who must be
 19 employed by a depository that:

20 (A) is not a state chartered credit union; and

21 (B) has total deposits of less than two hundred fifty million
 22 dollars (\$250,000,000).

23 (3) The member appointed by the president pro tempore of the
 24 senate must be employed by a depository that:

25 (A) is not a state chartered credit union; and

26 (B) has total deposits of at least two hundred fifty million
 27 dollars (\$250,000,000) but less than one billion dollars
 28 (\$1,000,000,000).

29 (4) The member appointed by the speaker of the house of
 30 representatives must be employed by a depository that:

31 (A) is not a state chartered credit union; and

32 (B) has total deposits of at least one billion dollars
 33 (\$1,000,000,000).

34 Total deposits shall be determined using the depository's reported
 35 deposits based on the information contained in the most recent June
 36 30th FDIC Summary of Deposits, Market Share Selection for Indiana.
 37 The term of an appointed member is four (4) years from the effective
 38 date of the member's appointment. Each appointed member holds
 39 office for the term of this appointment and serves after the expiration
 40 of that appointment until the member's successor is appointed and
 41 qualified. An appointed member may be reappointed if the individual
 42 satisfies the requirements of this subsection at the time of the
 43 reappointment. Any appointed member may be removed from office
 44 by, and at the pleasure of, the appointing authority.

45 (b) The officers of the board consist of a chairman, a
 46 secretary-investment manager, a vice chairman, and other officers the
 47 board determines to be necessary. The governor shall name a member
 48 of the board to serve as its chairman. The treasurer of state shall serve
 49 as the secretary-investment manager of the board. The board, by
 50 majority vote, shall elect the other officers. Officers, except the

1 secretary-investment manager, shall be named or elected for one (1)
 2 year terms in January of each year. The members and officers of the
 3 board are not entitled to any compensation for their services but are
 4 entitled to reimbursement for actual and necessary expenses on the
 5 same basis as state employees.

6 (c) Five (5) members of the board constitute a quorum for the
 7 transaction of business, and all actions of the board must be approved
 8 by at least a simple majority of those members voting on each
 9 individual business issue. The board may adopt, amend, or repeal
 10 bylaws and rules for the conduct of its meetings and the number and
 11 times of its meetings. The board shall hold a regular meeting at least
 12 once ~~each calendar quarter~~ **semiannually** and may hold other regular
 13 and special meetings as prescribed in its rules. All meetings of the
 14 board are open to the public under IC 5-14-1.5. However, the board
 15 shall discuss the following in executive session:

16 (1) The financial strength of a particular financial institution.

17 (2) The collateral requirements of a particular financial
 18 institution.

19 (3) Any other matters concerning a particular financial institution.

20 All records of the board are subject to public inspection under
 21 IC 5-14-3. However, records regarding matters that are discussed in
 22 executive session are confidential.

23 (d) Two (2) days notice of the time and place of all meetings to
 24 determine and fix the assessment rate to be paid by depositories on
 25 account of insurance on public funds or the establishment or
 26 redetermination of the reserve for losses of the insurance fund shall be
 27 given by one (1) publication in a newspaper of general circulation
 28 printed and published in the city of Indianapolis. The time, place,
 29 notice, and waiver requirements for the members of the board for all
 30 meetings shall be determined by its rules. The secretary-investment
 31 manager of the board shall enter ~~its~~ **the board's** proceedings at length
 32 in a record provided for that purpose, and the records of the
 33 proceedings shall be approved and signed respectively by the chairman
 34 or vice chairman and attested by the secretary-investment manager.

35 SECTION 9. IC 5-13-12-2.5 IS REPEALED [EFFECTIVE
 36 JANUARY 1, 2013]. ~~Sec. 2.5: (a) This section applies to a meeting of~~
 37 ~~the board for depositories at which at least five (5) members of the~~
 38 ~~board are physically present at the place where the meeting is~~
 39 ~~conducted.~~

40 (b) ~~A member of the board may participate in a meeting of the board~~
 41 ~~by using a means of communication that permits:~~

42 (1) ~~all other members participating in the meeting; and~~

43 (2) ~~all members of the public physically present at the place~~
 44 ~~where the meeting is conducted;~~

45 ~~to simultaneously communicate with each other during the meeting.~~

46 (c) ~~A member who participates in a meeting under subsection (b) is~~
 47 ~~considered to be present at the meeting.~~

48 (d) ~~A member who participates in a meeting under subsection (b)~~
 49 ~~may act as a voting member on official action only if that official action~~
 50 ~~is voted upon by at least five (5) members of the board physically~~

1 present at the place where the meeting is conducted:

2 (e) The memoranda of the meeting prepared under IC 5-14-1.5-4
3 must also state the name of each member who:

4 (1) was physically present at the place where the meeting was
5 conducted;

6 (2) participated in the meeting by using a means of
7 communication described in subsection (b); and

8 (3) was absent.

9 (f) A member who participates in a meeting under subsection (b)
10 may not cast the deciding vote on any official action.

11 SECTION 10. IC 5-14-1.5-3, AS AMENDED BY P.L.179-2007,
12 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
13 JANUARY 1, 2013]: Sec. 3. (a) Except as provided in section 6.1 of
14 this chapter, all meetings of the governing bodies of public agencies
15 must be open at all times for the purpose of permitting members of the
16 public to observe and record them.

17 (b) A secret ballot vote may not be taken at a meeting.

18 (c) A meeting conducted in compliance with ~~IC 5-1.5-2-2.5~~ **section**
19 **3.5 or 3.6 of this chapter or any other statute that authorizes a**
20 **governing body to conduct a meeting using an electronic means of**
21 **communication** does not violate this section.

22 (d) A member of the governing body of a public agency who is not
23 physically present at a meeting of the governing body but who
24 communicates with members of the governing body during the meeting
25 by telephone, computer, videoconferencing, or any other electronic
26 means of communication:

27 (1) may not participate in final action taken at the meeting unless
28 the member's participation is expressly authorized by statute; and

29 (2) may not be considered to be present at the meeting unless
30 considering the member to be present at the meeting is expressly
31 authorized by statute.

32 (e) The memoranda of a meeting prepared under section 4 of this
33 chapter that a member participates in by using a means of
34 communication described in subsection (d) must state the name of:

35 (1) each member who was physically present at the place where
36 the meeting was conducted;

37 (2) each member who participated in the meeting by using a
38 means of communication described in this section; and

39 (3) each member who was absent.

40 SECTION 11. IC 5-14-1.5-3.5 IS ADDED TO THE INDIANA
41 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
42 [EFFECTIVE JANUARY 1, 2013]: **Sec. 3.5. (a) This section applies**
43 **only to a governing body of a public agency of a political**
44 **subdivision.**

45 (b) A member of the governing body of a public agency who is
46 not physically present at a meeting of the governing body but who
47 communicates with members of the governing body during the
48 meeting by telephone, computer, video conferencing, or any other
49 electronic means of communication:

50 (1) may not participate in final action taken at the meeting
51 unless the member's participation is expressly authorized by

1 statute; and

2 (2) may not be considered to be present at the meeting unless
3 considering the member to be present at the meeting is
4 expressly authorized by statute.

5 (c) The memoranda prepared under section 4 of this chapter for
6 a meeting in which a member participates by using a means of
7 communication described in subsection (b) must state the name of:

8 (1) each member who was physically present at the place
9 where the meeting was conducted;

10 (2) each member who participated in the meeting by using a
11 means of communication described in subsection (b); and

12 (3) each member who was absent.

13 SECTION 12. IC 5-14-1.5-3.6 IS ADDED TO THE INDIANA
14 CODE AS A NEW SECTION TO READ AS FOLLOWS
15 [EFFECTIVE JANUARY 1, 2013]: **Sec. 3.6. (a) This section applies**
16 **only to a governing body of a public agency of the state, including**
17 **a body corporate and politic established as an instrumentality of**
18 **the state.**

19 (b) A member of the governing body of a public agency who is
20 not physically present at a meeting of the governing body may
21 participate in a meeting of the governing body by electronic
22 communication only if the member uses a means of communication
23 that permits:

24 (1) the member;

25 (2) all other members participating in the meeting;

26 (3) all members of the public physically present at the place
27 where the meeting is conducted; and

28 (4) if the meeting is conducted under a policy adopted under
29 subsection (g)(7), all members of the public physically present
30 at a public location at which a member participates by means
31 of electronic communication;

32 to simultaneously communicate with each other during the
33 meeting.

34 (c) The governing body must fulfill both of the following
35 requirements for a member of the governing body to participate in
36 a meeting by electronic communication:

37 (1) This subdivision does not apply to committees appointed
38 by a board of trustees of a state educational institution. The
39 minimum number of members who must be physically
40 present at the place where the meeting is conducted must be
41 the greater of:

42 (A) two (2) of the members; or

43 (B) one-third (1/3) of the members.

44 (2) All votes of the governing body during the electronic
45 meeting must be taken by roll call vote.

46 Nothing in this section affects the public's right under this chapter
47 to attend a meeting of the governing body at the place where the
48 meeting is conducted and the minimum number of members is
49 physically present as provided for in subdivision (1).

50 (d) Each member of the governing body is required to physically
51 attend at least one (1) meeting of the governing body annually.

1 (e) Unless a policy adopted by a governing body under
2 subsection (g) provides otherwise, a member who participates in a
3 meeting by electronic communication:

4 (1) is considered to be present at the meeting;

5 (2) shall be counted for purposes of establishing a quorum;
6 and

7 (3) may vote at the meeting.

8 (f) A governing body may not conduct meetings using a means
9 of electronic communication until the governing body:

10 (1) meets all requirements of this chapter; and

11 (2) by a favorable vote of a majority of the members of the
12 governing body, adopts a policy under subsection (g)
13 governing participation in meetings of the governing body by
14 electronic communication.

15 (g) A policy adopted by a governing body to govern
16 participation in the governing body's meetings by electronic
17 communication may do any of the following:

18 (1) Require a member to request authorization to participate
19 in a meeting of the governing body by electronic
20 communication within a certain number of days before the
21 meeting to allow for arrangements to be made for the
22 member's participation by electronic communication.

23 (2) Subject to subsection (e), limit the number of members
24 who may participate in any one (1) meeting by electronic
25 communication.

26 (3) Limit the total number of meetings that the governing
27 body may conduct in a calendar year by electronic
28 communication.

29 (4) Limit the number of meetings in a calendar year in which
30 any one (1) member of the governing body may participate by
31 electronic communication.

32 (5) Provide that a member who participates in a meeting by
33 electronic communication may not cast the deciding vote on
34 any official action.

35 (6) Require a member participating in a meeting by electronic
36 communication to confirm in writing the votes cast by the
37 member during the meeting within a certain number of days
38 after the date of the meeting.

39 (7) Provide that in addition to the location where a meeting is
40 conducted, the public may also attend some or all meetings of
41 the governing body, excluding executive sessions, at a public
42 place or public places at which a member is physically present
43 and participates by electronic communication. If the
44 governing body's policy includes this provision, a meeting
45 notice must provide the following information:

46 (A) The identity of each member who will be physically
47 present at a public place and participate in the meeting by
48 electronic communication.

49 (B) The address and telephone number of each public place
50 where a member will be physically present and participate
51 by electronic communication.

- 1 **(C) Unless the meeting is an executive session, a statement**
 2 **that a location described in clause (B) will be open and**
 3 **accessible to the public.**
- 4 **(8) Require at least a quorum of members to be physically**
 5 **present at the location where the meeting is conducted.**
- 6 **(9) Provide that a member participating by electronic**
 7 **communication may vote on official action only if, subject to**
 8 **subsection (e), a specified number of members:**
- 9 **(A) are physically present at the location where the**
 10 **meeting is conducted; and**
- 11 **(B) concur in the official action.**
- 12 **(10) Establish any other procedures, limitations, or conditions**
 13 **that govern participation in meetings of the governing body**
 14 **by electronic communication and are not in conflict with this**
 15 **chapter.**
- 16 **(h) The policy adopted by the governing body must be posted on**
 17 **the Internet web site of the governing body or the public agency.**
- 18 **(i) Nothing in this section affects a public agency's right to**
 19 **exclude the public from an executive session in which a member**
 20 **participates by electronic communication.**
- 21 SECTION 13. IC 5-14-1.5-4, AS AMENDED BY P.L.2-2007,
 22 SECTION 99, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 23 JANUARY 1, 2013]: Sec. 4. (a) A governing body of a public agency
 24 utilizing an agenda shall post a copy of the agenda at the entrance to
 25 the location of the meeting prior to the meeting. A rule, regulation,
 26 ordinance, or other final action adopted by reference to agenda number
 27 or item alone is void.
- 28 (b) As the meeting progresses, the following memoranda shall be
 29 kept:
- 30 (1) The date, time, and place of the meeting.
- 31 (2) The members of the governing body recorded as either present
 32 or absent.
- 33 (3) The general substance of all matters proposed, discussed, or
 34 decided.
- 35 (4) A record of all votes taken by individual members if there is
 36 a roll call.
- 37 (5) Any additional information required under ~~IC 5-1.5-2-2.5.~~
 38 **section 3.5 or 3.6 of this chapter or any other statute that**
 39 **authorizes a governing body to conduct a meeting using an**
 40 **electronic means of communication.**
- 41 (c) The memoranda are to be available within a reasonable period
 42 of time after the meeting for the purpose of informing the public of the
 43 governing body's proceedings. The minutes, if any, are to be open for
 44 public inspection and copying.
- 45 SECTION 14. IC 5-14-1.5-5, AS AMENDED BY P.L.177-2005,
 46 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 47 JULY 1, 2012]: Sec. 5. (a) Public notice of the date, time, and place of
 48 any meetings, executive sessions, or of any rescheduled or reconvened
 49 meeting, shall be given at least forty-eight (48) hours (excluding
 50 Saturdays, Sundays, and legal holidays) before the meeting. This
 51 requirement does not apply to reconvened meetings (not including

1 executive sessions) where announcement of the date, time, and place
 2 of the reconvened meeting is made at the original meeting and recorded
 3 in the memoranda and minutes thereof, and there is no change in the
 4 agenda.

5 (b) Public notice shall be given by the governing body of a public
 6 agency ~~by~~ **as follows:**

7 (1) **The governing body of a public agency shall give public**
 8 **notice by** posting a copy of the notice at the principal office of the
 9 public agency holding the meeting or, if no such office exists, at
 10 the building where the meeting is to be held. ~~and~~

11 (2) **The governing body of a public agency shall give public**
 12 **notice by** delivering notice to all news media which deliver ~~by~~
 13 ~~January 1~~ an annual written request for ~~such~~ **the notices not later**
 14 **than December 31** for the next succeeding calendar year to the
 15 governing body of the public agency. The governing body shall
 16 give notice by one (1) of the following methods, **which shall be**
 17 **determined by the governing body:**

18 (A) Depositing the notice in the United States mail with
 19 postage prepaid.

20 (B) Transmitting the notice by electronic mail, **if the public**
 21 **agency has the capacity to transmit electronic mail.**

22 (C) Transmitting the notice by facsimile (fax).

23 (3) **This subdivision applies only to the governing body of a**
 24 **public agency of a political subdivision described in section**
 25 **2(a)(2), 2(a)(4), or 2(a)(5) of this chapter that adopts a policy**
 26 **to provide notice under this subdivision. Notice under this**
 27 **subsection is in addition to providing notice under**
 28 **subdivisions (1) and (2). If the governing body adopts a policy**
 29 **under this subdivision, the governing body of a public agency**
 30 **shall give public notice by delivering notice to any person**
 31 **(other than news media) who delivers to the governing body**
 32 **of the public agency an annual written request for the notices**
 33 **not later than December 31 for the next succeeding calendar**
 34 **year. The governing body shall give notice by one (1) of the**
 35 **following methods, which shall be determined by the**
 36 **governing body:**

37 (A) **Transmitting the notice by electronic mail, if the public**
 38 **agency has the capacity to send electronic mail.**

39 (B) **Publishing the notice on the public agency's Internet**
 40 **web site at least forty-eight (48) hours in advance of the**
 41 **meeting, if the public agency has an Internet web site.**

42 **A court may not declare void any policy, decision, or final action**
 43 **under section 7 of this chapter based on a failure to give a person**
 44 **notice under subdivision (3) if the public agency made a good faith**
 45 **effort to comply with subdivision (3).** If a governing body comes into
 46 existence after ~~January 1~~, **December 31**, it shall comply with this
 47 ~~subdivision subsection~~ upon receipt of a written request for notice. In
 48 addition, a state agency (as defined in IC 4-13-1-1) shall provide
 49 electronic access to the notice through the computer gateway
 50 administered by the office of technology established by IC 4-13.1-2-1.

51 (c) Notice of regular meetings need be given only once each year,

1 except that an additional notice shall be given where the date, time, or
 2 place of a regular meeting or meetings is changed. This subsection does
 3 not apply to executive sessions.

4 (d) If a meeting is called to deal with an emergency involving actual
 5 or threatened injury to person or property, or actual or threatened
 6 disruption of the governmental activity under the jurisdiction of the
 7 public agency by any event, then the time requirements of notice under
 8 this section shall not apply, but:

9 (1) news media which have requested notice of meetings **under**
 10 **subsection (b)(2)** must be given the same notice as is given to the
 11 members of the governing body; and

12 (2) the public must be notified by posting a copy of the notice
 13 according to ~~this section~~: **subsection (b)(1)**.

14 (e) This section shall not apply where notice by publication is
 15 required by statute, ordinance, rule, or regulation.

16 (f) This section shall not apply to:

17 (1) the department of local government finance, the Indiana board
 18 of tax review, or any other governing body which meets in
 19 continuous session, except that this section applies to meetings of
 20 these governing bodies which are required by or held pursuant to
 21 statute, ordinance, rule, or regulation; or

22 (2) the executive of a county or the legislative body of a town if
 23 the meetings are held solely to receive information or
 24 recommendations in order to carry out administrative functions,
 25 to carry out administrative functions, or confer with staff
 26 members on matters relating to the internal management of the
 27 unit. "Administrative functions" do not include the awarding of
 28 contracts, the entering into contracts, or any other action creating
 29 an obligation or otherwise binding a county or town.

30 (g) This section does not apply to the general assembly.

31 (h) Notice has not been given in accordance with this section if a
 32 governing body of a public agency convenes a meeting at a time so
 33 unreasonably departing from the time stated in its public notice that the
 34 public is misled or substantially deprived of the opportunity to attend,
 35 observe, and record the meeting.

36 SECTION 15. IC 5-14-1.5-7, AS AMENDED BY P.L.179-2007,
 37 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 38 JULY 1, 2012]: Sec. 7. (a) An action may be filed by any person in any
 39 court of competent jurisdiction to:

40 (1) obtain a declaratory judgment;

41 (2) enjoin continuing, threatened, or future violations of this
 42 chapter; or

43 (3) declare void any policy, decision, or final action:

44 (A) taken at an executive session in violation of section 3(a) of
 45 this chapter;

46 (B) taken at any meeting of which notice is not given in
 47 accordance with section 5 of this chapter;

48 (C) that is based in whole or in part upon official action taken
 49 at any:

50 (i) executive session in violation of section 3(a) of this

- 1 chapter;
- 2 (ii) meeting of which notice is not given in accordance with
- 3 section 5 of this chapter; or
- 4 (iii) series of gatherings in violation of section 3.1 of this
- 5 chapter; or
- 6 (D) taken at a meeting held in a location in violation of section
- 7 8 of this chapter.
- 8 The plaintiff need not allege or prove special damage different from
- 9 that suffered by the public at large.
- 10 (b) Regardless of whether a formal complaint or an informal inquiry
- 11 is pending before the public access counselor, any action to declare any
- 12 policy, decision, or final action of a governing body void, or to enter an
- 13 injunction which would invalidate any policy, decision, or final action
- 14 of a governing body, based on violation of this chapter occurring before
- 15 the action is commenced, shall be commenced:
- 16 (1) prior to the delivery of any warrants, notes, bonds, or
- 17 obligations if the relief sought would have the effect, if granted,
- 18 of invalidating the notes, bonds, or obligations; or
- 19 (2) with respect to any other subject matter, within thirty (30)
- 20 days of either:
- 21 (A) the date of the act or failure to act complained of; or
- 22 (B) the date that the plaintiff knew or should have known that
- 23 the act or failure to act complained of had occurred;
- 24 whichever is later. If the challenged policy, decision, or final action is
- 25 recorded in the memoranda or minutes of a governing body, a plaintiff
- 26 is considered to have known that the act or failure to act complained of
- 27 had occurred not later than the date that the memoranda or minutes are
- 28 first available for public inspection.
- 29 (c) If a court finds that a governing body of a public agency has
- 30 violated this chapter, it may not find that the violation was cured by the
- 31 governing body by only having taken final action at a meeting that
- 32 complies with this chapter.
- 33 (d) In determining whether to declare any policy, decision, or final
- 34 action void, a court shall consider the following factors among other
- 35 relevant factors:
- 36 (1) The extent to which the violation:
- 37 (A) affected the substance of the policy, decision, or final
- 38 action;
- 39 (B) denied or impaired access to any meetings that the public
- 40 had a right to observe and record; and
- 41 (C) prevented or impaired public knowledge or understanding
- 42 of the public's business.
- 43 (2) Whether voiding of the policy, decision, or final action is a
- 44 necessary prerequisite to a substantial reconsideration of the
- 45 subject matter.
- 46 (3) Whether the public interest will be served by voiding the
- 47 policy, decision, or final action by determining which of the
- 48 following factors outweighs the other:
- 49 (A) The remedial benefits gained by effectuating the public
- 50 policy of the state declared in section 1 of this chapter.

- 1 (B) The prejudice likely to accrue to the public if the policy,
 2 decision, or final action is voided, including the extent to
 3 which persons have relied upon the validity of the challenged
 4 action and the effect declaring the challenged action void
 5 would have on them.
- 6 (4) Whether the defendant acted in compliance with an informal
 7 inquiry response or advisory opinion issued by the public access
 8 counselor concerning the violation.
- 9 (e) If a court declares a policy, decision, or final action of a
 10 governing body of a public agency void, the court may enjoin the
 11 governing body from subsequently acting upon the subject matter of
 12 the voided act until it has been given substantial reconsideration at a
 13 meeting or meetings that comply with this chapter.
- 14 (f) In any action filed under this section, a court shall award
 15 reasonable attorney's fees, court costs, and other reasonable expenses
 16 of litigation to the prevailing party if:
 17 (1) the plaintiff prevails; or
 18 (2) the defendant prevails and the court finds that the action is
 19 frivolous and vexatious.
- 20 The plaintiff is not eligible for the awarding of attorney's fees, court
 21 costs, and other reasonable expenses if the plaintiff filed the action
 22 without first seeking and receiving an informal inquiry response or
 23 advisory opinion from the public access counselor, unless the plaintiff
 24 can show the filing of the action was necessary to prevent a violation
 25 of this chapter.
- 26 **(g) A court may assess a civil penalty under section 7.5 of this**
 27 **chapter only if the plaintiff obtained an advisory opinion from the**
 28 **public access counselor before filing an action under this section as**
 29 **set forth in section 7.5 of this chapter.**
- 30 ~~(g)~~ **(h)** A court shall expedite the hearing of an action filed under
 31 this section.
- 32 SECTION 16. IC 5-14-1.5-7.5 IS ADDED TO THE INDIANA
 33 CODE AS A NEW SECTION TO READ AS FOLLOWS
 34 [EFFECTIVE JULY 1, 2012]: **Sec. 7.5. (a) This section applies only**
 35 **to an individual who is:**
 36 **(1) an officer of a public agency; or**
 37 **(2) employed in a management level position with a public**
 38 **agency.**
- 39 **(b) If an individual with the specific intent to violate the law fails**
 40 **to perform a duty imposed on the individual under this chapter by:**
 41 **(1) failing to give proper notice of a regular meeting, special**
 42 **meeting, or executive session;**
 43 **(2) taking final action outside a regular meeting or special**
 44 **meeting;**
 45 **(3) participating in a secret ballot during a meeting;**
 46 **(4) discussing in an executive session subjects not eligible for**
 47 **discussion in an executive session;**
 48 **(5) failing to prepare a memorandum of a meeting as required**
 49 **by section 4 of this chapter; or**
 50 **(6) participating in at least one (1) gathering of a series of**
 51 **gatherings under section 3.1 of this chapter;**

1 the individual and the public agency are subject to a civil penalty
2 under subsection (f).

3 (c) A civil penalty may only be imposed as part of an action filed
4 under section 7 of this chapter. A court may not impose a civil
5 penalty under this section unless the public access counselor has
6 issued an advisory opinion:

7 (1) to the complainant and the public agency;

8 (2) that finds that the individual or public agency violated this
9 chapter; and

10 (3) before the action under section 7 of this chapter is filed.

11 Nothing in this section prevents both the complainant and the
12 public agency from requesting an advisory opinion from the public
13 access counselor.

14 (d) It is a defense to the imposition of a civil penalty under this
15 section that the individual failed to perform a duty under
16 subsection (b) in reliance on either of the following:

17 (1) An opinion of the public agency's legal counsel.

18 (2) An opinion of the attorney general.

19 (e) Except as provided in subsection (i), in an action filed under
20 section 7 of this chapter, a court may impose a civil penalty against
21 one (1) or more of the following:

22 (1) The individual named as a defendant in the action.

23 (2) The public agency named as a defendant in the action.

24 (f) The court may impose against each defendant listed in
25 subsection (c) the following civil penalties:

26 (1) Not more than one hundred dollars (\$100) for the first
27 violation.

28 (2) Not more than five hundred dollars (\$500) for each
29 additional violation.

30 A civil penalty imposed under this section is in addition to any
31 other civil or criminal penalty imposed. However, in any one (1)
32 action brought under section 7 of this chapter, a court may impose
33 only one (1) civil penalty against an individual, even if the court
34 finds that the individual committed multiple violations. This
35 subsection does not preclude a court from imposing another civil
36 penalty against an individual in a separate action, but an individual
37 may not be assessed more than one (1) civil penalty in any one (1)
38 action brought under this section.

39 (g) A court shall distribute monthly to the auditor of state any
40 penalties collected under this section for deposit in the education
41 fund established by IC 5-14-4-14.

42 (h) An individual is personally liable for a civil penalty imposed
43 on the individual under this section. A civil penalty imposed
44 against a public agency under this section shall be paid from the
45 public agency's budget.

46 (i) If an officer of a public agency directs an individual who is
47 employed in a management level position to fail to give proper
48 notice as described in subsection (b)(1), the management level
49 employee is not subject to civil penalties under subsection (f).

50 SECTION 17. IC 5-14-3-3, AS AMENDED BY P.L.2-2007,
51 SECTION 100, IS AMENDED TO READ AS FOLLOWS

1 [EFFECTIVE JULY 1, 2012]: Sec. 3. (a) Any person may inspect and
2 copy the public records of any public agency during the regular
3 business hours of the agency, except as provided in section 4 of this
4 chapter. A request for inspection or copying must:

- 5 (1) identify with reasonable particularity the record being
6 requested; and
- 7 (2) be, at the discretion of the agency, in writing on or in a form
8 provided by the agency.

9 No request may be denied because the person making the request
10 refuses to state the purpose of the request, unless such condition is
11 required by other applicable statute.

12 (b) A public agency may not deny or interfere with the exercise of
13 the right stated in subsection (a). **Within a reasonable time after the**
14 **request is received by the agency**, the public agency shall either:

- 15 (1) provide the requested copies to the person making the request;
16 or
- 17 (2) allow the person to make copies:
 - 18 (A) on the agency's equipment; or
 - 19 (B) on the person's own equipment.

20 (c) Notwithstanding subsections (a) and (b), a public agency may or
21 may not do the following:

- 22 (1) In accordance with a contract described in section 3.5 of this
23 chapter, permit a person to inspect and copy through the use of
24 enhanced access public records containing information owned by
25 or entrusted to the public agency.
- 26 (2) Permit a governmental entity to use an electronic device to
27 inspect and copy public records containing information owned by
28 or entrusted to the public agency.

29 (d) Except as provided in subsection (e), a public agency that
30 maintains or contracts for the maintenance of public records in an
31 electronic data storage system shall make reasonable efforts to provide
32 to a person making a request a copy of all disclosable data contained
33 in the records on paper, disk, tape, drum, or any other method of
34 electronic retrieval if the medium requested is compatible with the
35 agency's data storage system. This subsection does not apply to an
36 electronic map.

37 (e) A state agency may adopt a rule under IC 4-22-2, and a political
38 subdivision may enact an ordinance, prescribing the conditions under
39 which a person who receives information on disk or tape under
40 subsection (d) may or may not use the information for commercial
41 purposes, including to sell, advertise, or solicit the purchase of
42 merchandise, goods, or services, or sell, loan, give away, or otherwise
43 deliver the information obtained by the request to any other person for
44 these purposes. Use of information received under subsection (d) in
45 connection with the preparation or publication of news, for nonprofit
46 activities, or for academic research is not prohibited. A person who
47 uses information in a manner contrary to a rule or ordinance adopted
48 under this subsection may be prohibited by the state agency or political
49 subdivision from obtaining a copy or any further data under subsection
50 (d).

1 (f) Notwithstanding the other provisions of this section, a public
 2 agency is not required to create or provide copies of lists of names and
 3 addresses (including electronic mail account addresses) unless the
 4 public agency is required to publish such lists and disseminate them to
 5 the public under a statute. However, if a public agency has created a
 6 list of names and addresses (excluding electronic mail account
 7 addresses) it must permit a person to inspect and make memoranda
 8 abstracts from the list unless access to the list is prohibited by law. The
 9 lists of names and addresses (including electronic mail account
 10 addresses) described in subdivisions (1) through (3) may not be
 11 disclosed by public agencies to any individual or entity for political
 12 purposes and may not be used by any individual or entity for political
 13 purposes. In addition, the lists of names and addresses (including
 14 electronic mail account addresses) described in subdivisions (1)
 15 through (3) may not be disclosed by public agencies to commercial
 16 entities for commercial purposes and may not be used by commercial
 17 entities for commercial purposes. The prohibition in this subsection
 18 against the disclosure of lists for political or commercial purposes
 19 applies to the following lists of names and addresses (including
 20 electronic mail account addresses):

21 (1) A list of employees of a public agency.

22 (2) A list of persons attending conferences or meetings at a state
 23 educational institution or of persons involved in programs or
 24 activities conducted or supervised by the state educational
 25 institution.

26 (3) A list of students who are enrolled in a public school
 27 corporation if the governing body of the public school corporation
 28 adopts a policy:

29 (A) with respect to disclosure related to a commercial purpose,
 30 prohibiting the disclosure of the list to commercial entities for
 31 commercial purposes;

32 (B) with respect to disclosure related to a commercial purpose,
 33 specifying the classes or categories of commercial entities to
 34 which the list may not be disclosed or by which the list may
 35 not be used for commercial purposes; or

36 (C) with respect to disclosure related to a political purpose,
 37 prohibiting the disclosure of the list to individuals and entities
 38 for political purposes.

39 A policy adopted under subdivision (3)(A) or (3)(B) must be uniform
 40 and may not discriminate among similarly situated commercial entities.
 41 For purposes of this subsection, "political purposes" means influencing
 42 the election of a candidate for federal, state, legislative, local, or school
 43 board office or the outcome of a public question or attempting to solicit
 44 a contribution to influence the election of a candidate for federal, state,
 45 legislative, local, or school board office or the outcome of a public
 46 question.

47 (g) A public agency may not enter into or renew a contract or an
 48 obligation:

49 (1) for the storage or copying of public records; or

50 (2) that requires the public to obtain a license or pay copyright

1 royalties for obtaining the right to inspect and copy the records
 2 unless otherwise provided by applicable statute;
 3 if the contract, obligation, license, or copyright unreasonably impairs
 4 the right of the public to inspect and copy the agency's public records.

5 (h) If this section conflicts with IC 3-7, the provisions of IC 3-7
 6 apply.

7 SECTION 18. IC 5-14-3-4, AS AMENDED BY P.L.170-2011,
 8 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 9 JULY 1, 2012]: Sec. 4. (a) The following public records are excepted
 10 from section 3 of this chapter and may not be disclosed by a public
 11 agency, unless access to the records is specifically required by a state
 12 or federal statute or is ordered by a court under the rules of discovery:

13 (1) Those declared confidential by state statute.

14 (2) Those declared confidential by rule adopted by a public
 15 agency under specific authority to classify public records as
 16 confidential granted to the public agency by statute.

17 (3) Those required to be kept confidential by federal law.

18 (4) Records containing trade secrets.

19 (5) Confidential financial information obtained, upon request,
 20 from a person. However, this does not include information that is
 21 filed with or received by a public agency pursuant to state statute.

22 (6) Information concerning research, including actual research
 23 documents, conducted under the auspices of a state educational
 24 institution, including information:

25 (A) concerning any negotiations made with respect to the
 26 research; and

27 (B) received from another party involved in the research.

28 (7) Grade transcripts and license examination scores obtained as
 29 part of a licensure process.

30 (8) Those declared confidential by or under rules adopted by the
 31 supreme court of Indiana.

32 (9) Patient medical records and charts created by a provider,
 33 unless the patient gives written consent under IC 16-39 or as
 34 provided under IC 16-41-8.

35 (10) Application information declared confidential by the board
 36 of the Indiana economic development corporation under
 37 IC 5-28-16.

38 (11) A photograph, a video recording, or an audio recording of an
 39 autopsy, except as provided in IC 36-2-14-10.

40 (12) A Social Security number contained in the records of a
 41 public agency.

42 (13) The following information that is part of a foreclosure action
 43 subject to IC 32-30-10.5:

44 (A) Contact information for a debtor, as described in
 45 IC 32-30-10.5-8(d)(2)(B).

46 (B) Any document submitted to the court as part of the debtor's
 47 loss mitigation package under IC 32-30-10.5-10(a)(3).

48 (b) Except as otherwise provided by subsection (a), the following
 49 public records shall be excepted from section 3 of this chapter at the
 50 discretion of a public agency:

- 1 (1) Investigatory records of law enforcement agencies. However,
2 certain law enforcement records must be made available for
3 inspection and copying as provided in section 5 of this chapter.
- 4 (2) The work product of an attorney representing, pursuant to
5 state employment or an appointment by a public agency:
 - 6 (A) a public agency;
 - 7 (B) the state; or
 - 8 (C) an individual.
- 9 (3) Test questions, scoring keys, and other examination data used
10 in administering a licensing examination, examination for
11 employment, or academic examination before the examination is
12 given or if it is to be given again.
- 13 (4) Scores of tests if the person is identified by name and has not
14 consented to the release of the person's scores.
- 15 (5) The following:
 - 16 (A) Records relating to negotiations between the Indiana
17 economic development corporation, the ports of Indiana, the
18 Indiana state department of agriculture, the Indiana finance
19 authority, an economic development commission, a local
20 economic development organization (as defined in
21 IC 5-28-11-2(3)), or a governing body of a political
22 subdivision with industrial, research, or commercial prospects,
23 if the records are created while negotiations are in progress.
 - 24 (B) Notwithstanding clause (A), the terms of the final offer of
25 public financial resources communicated by the Indiana
26 economic development corporation, the ports of Indiana, the
27 Indiana finance authority, an economic development
28 commission, or a governing body of a political subdivision to
29 an industrial, a research, or a commercial prospect shall be
30 available for inspection and copying under section 3 of this
31 chapter after negotiations with that prospect have terminated.
 - 32 (C) When disclosing a final offer under clause (B), the Indiana
33 economic development corporation shall certify that the
34 information being disclosed accurately and completely
35 represents the terms of the final offer.
- 36 (6) Records that are intra-agency or interagency advisory or
37 deliberative material, including material developed by a private
38 contractor under a contract with a public agency, that are
39 expressions of opinion or are of a speculative nature, and that are
40 communicated for the purpose of decision making.
- 41 (7) Diaries, journals, or other personal notes serving as the
42 functional equivalent of a diary or journal.
- 43 (8) Personnel files of public employees and files of applicants for
44 public employment, except for:
 - 45 (A) the name, compensation, job title, business address,
46 business telephone number, job description, education and
47 training background, previous work experience, or dates of
48 first and last employment of present or former officers or
49 employees of the agency;
 - 50 (B) information relating to the status of any formal charges

- 1 against the employee; and
 2 (C) the factual basis for a disciplinary action in which final
 3 action has been taken and that resulted in the employee being
 4 suspended, demoted, or discharged.
- 5 However, all personnel file information shall be made available
 6 to the affected employee or the employee's representative. This
 7 subdivision does not apply to disclosure of personnel information
 8 generally on all employees or for groups of employees without the
 9 request being particularized by employee name.
- 10 (9) Minutes or records of hospital medical staff meetings.
- 11 (10) Administrative or technical information that would
 12 jeopardize a record keeping or security system.
- 13 (11) Computer programs, computer codes, computer filing
 14 systems, and other software that are owned by the public agency
 15 or entrusted to it and portions of electronic maps entrusted to a
 16 public agency by a utility.
- 17 (12) Records specifically prepared for discussion or developed
 18 during discussion in an executive session under IC 5-14-1.5-6.1.
 19 However, this subdivision does not apply to that information
 20 required to be available for inspection and copying under
 21 subdivision (8).
- 22 (13) The work product of the legislative services agency under
 23 personnel rules approved by the legislative council.
- 24 (14) The work product of individual members and the partisan
 25 staffs of the general assembly.
- 26 (15) The identity of a donor of a gift made to a public agency if:
 27 (A) the donor requires nondisclosure of the donor's identity as
 28 a condition of making the gift; or
 29 (B) after the gift is made, the donor or a member of the donor's
 30 family requests nondisclosure.
- 31 (16) Library or archival records:
 32 (A) which can be used to identify any library patron; or
 33 (B) deposited with or acquired by a library upon a condition
 34 that the records be disclosed only:
 35 (i) to qualified researchers;
 36 (ii) after the passing of a period of years that is specified in
 37 the documents under which the deposit or acquisition is
 38 made; or
 39 (iii) after the death of persons specified at the time of the
 40 acquisition or deposit.
- 41 However, nothing in this subdivision shall limit or affect contracts
 42 entered into by the Indiana state library pursuant to IC 4-1-6-8.
- 43 (17) The identity of any person who contacts the bureau of motor
 44 vehicles concerning the ability of a driver to operate a motor
 45 vehicle safely and the medical records and evaluations made by
 46 the bureau of motor vehicles staff or members of the driver
 47 licensing medical advisory board regarding the ability of a driver
 48 to operate a motor vehicle safely. However, upon written request
 49 to the commissioner of the bureau of motor vehicles, the driver
 50 must be given copies of the driver's medical records and

- 1 evaluations.
- 2 (18) School safety and security measures, plans, and systems,
3 including emergency preparedness plans developed under 511
4 IAC 6.1-2-2.5.
- 5 (19) A record or a part of a record, the public disclosure of which
6 would have a reasonable likelihood of threatening public safety
7 by exposing a vulnerability to terrorist attack. A record described
8 under this subdivision includes:
- 9 (A) a record assembled, prepared, or maintained to prevent,
10 mitigate, or respond to an act of terrorism under IC 35-47-12-1
11 or an act of agricultural terrorism under IC 35-47-12-2;
12 (B) vulnerability assessments;
13 (C) risk planning documents;
14 (D) needs assessments;
15 (E) threat assessments;
16 (F) intelligence assessments;
17 (G) domestic preparedness strategies;
18 (H) the location of community drinking water wells and
19 surface water intakes;
20 (I) the emergency contact information of emergency
21 responders and volunteers;
22 (J) infrastructure records that disclose the configuration of
23 critical systems such as communication, electrical, ventilation,
24 water, and wastewater systems; and
25 (K) detailed drawings or specifications of structural elements,
26 floor plans, and operating, utility, or security systems, whether
27 in paper or electronic form, of any building or facility located
28 on an airport (as defined in IC 8-21-1-1) that is owned,
29 occupied, leased, or maintained by a public agency. A record
30 described in this clause may not be released for public
31 inspection by any public agency without the prior approval of
32 the public agency that owns, occupies, leases, or maintains the
33 airport. The public agency that owns, occupies, leases, or
34 maintains the airport:
- 35 (i) is responsible for determining whether the public
36 disclosure of a record or a part of a record has a reasonable
37 likelihood of threatening public safety by exposing a
38 vulnerability to terrorist attack; and
39 (ii) must identify a record described under item (i) and
40 clearly mark the record as "confidential and not subject to
41 public disclosure under IC 5-14-3-4(b)(19)(J) without
42 approval of (insert name of submitting public agency)".
- 43 This subdivision does not apply to a record or portion of a record
44 pertaining to a location or structure owned or protected by a
45 public agency in the event that an act of terrorism under
46 IC 35-47-12-1 or an act of agricultural terrorism under
47 IC 35-47-12-2 has occurred at that location or structure, unless
48 release of the record or portion of the record would have a
49 reasonable likelihood of threatening public safety by exposing a
50 vulnerability of other locations or structures to terrorist attack.

- 1 (20) The following personal information concerning a customer
 2 of a municipally owned utility (as defined in IC 8-1-2-1):
 3 (A) Telephone number.
 4 (B) Address.
 5 (C) Social Security number.
- 6 (21) The following personal information about a complainant
 7 contained in records of a law enforcement agency:
 8 (A) Telephone number.
 9 (B) The complainant's address. However, if the complainant's
 10 address is the location of the suspected crime, infraction,
 11 accident, or complaint reported, the address shall be made
 12 available for public inspection and copying.
- 13 (22) Notwithstanding subdivision (8)(A), the name,
 14 compensation, job title, business address, business telephone
 15 number, job description, education and training background,
 16 previous work experience, or dates of first employment of a law
 17 enforcement officer who is operating in an undercover capacity.
- 18 (23) Records requested by an offender that:
 19 (A) contain personal information relating to:
 20 (i) a correctional officer (as defined in IC 5-10-10-1.5);
 21 **(ii) a law enforcement officer (as defined in**
 22 **IC 35-31.5-2-185);**
 23 **(iii) a judge (as defined in IC 33-38-12-3);**
 24 ~~(ii)~~ (iv) the victim of a crime; or
 25 ~~(iii)~~ (v) a family member of a correctional officer, **law**
 26 **enforcement officer (as defined in IC 35-31.5-2-185),**
 27 **judge (as defined in IC 33-38-12-3), or the victim of a**
 28 **crime; or**
 29 (B) concern or could affect the security of a jail or correctional
 30 facility.
- 31 **(24) Information concerning an individual less than eighteen**
 32 **(18) years of age who participates in a conference, meeting,**
 33 **program, or activity conducted or supervised by a state**
 34 **educational institution, including the following information**
 35 **regarding the individual or the individual's parent or**
 36 **guardian:**
 37 **(A) Name.**
 38 **(B) Address.**
 39 **(C) Telephone number.**
 40 **(D) Electronic mail account address.**
- 41 (c) Nothing contained in subsection (b) shall limit or affect the right
 42 of a person to inspect and copy a public record required or directed to
 43 be made by any statute or by any rule of a public agency.
- 44 (d) Notwithstanding any other law, a public record that is classified
 45 as confidential, other than a record concerning an adoption or patient
 46 medical records, shall be made available for inspection and copying
 47 seventy-five (75) years after the creation of that record.
- 48 (e) Only the content of a public record may form the basis for the
 49 adoption by any public agency of a rule or procedure creating an
 50 exception from disclosure under this section.
- 51 (f) Except as provided by law, a public agency may not adopt a rule

1 or procedure that creates an exception from disclosure under this
 2 section based upon whether a public record is stored or accessed using
 3 paper, electronic media, magnetic media, optical media, or other
 4 information storage technology.

5 (g) Except as provided by law, a public agency may not adopt a rule
 6 or procedure nor impose any costs or liabilities that impede or restrict
 7 the reproduction or dissemination of any public record.

8 (h) Notwithstanding subsection (d) and section 7 of this chapter:

9 (1) public records subject to IC 5-15 may be destroyed only in
 10 accordance with record retention schedules under IC 5-15; or

11 (2) public records not subject to IC 5-15 may be destroyed in the
 12 ordinary course of business.

13 SECTION 19. IC 5-14-3-9, AS AMENDED BY P.L.22-2005,
 14 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 15 JULY 1, 2012]: Sec. 9. (a) A denial of disclosure by a public agency
 16 occurs when the person making the request is physically present in the
 17 office of the agency, makes the request by telephone, or requests
 18 enhanced access to a document and:

19 (1) the person designated by the public agency as being
 20 responsible for public records release decisions refuses to permit
 21 inspection and copying of a public record when a request has
 22 been made; or

23 (2) twenty-four (24) hours elapse after any employee of the public
 24 agency refuses to permit inspection and copying of a public
 25 record when a request has been made;

26 whichever occurs first.

27 (b) If a person requests by mail or by facsimile a copy or copies of
 28 a public record, a denial of disclosure does not occur until seven (7)
 29 days have elapsed from the date the public agency receives the request.

30 (c) If a request is made orally, either in person or by telephone, a
 31 public agency may deny the request orally. However, if a request
 32 initially is made in writing, by facsimile, or through enhanced access,
 33 or if an oral request that has been denied is renewed in writing or by
 34 facsimile, a public agency may deny the request if:

35 (1) the denial is in writing or by facsimile; and

36 (2) the denial includes:

37 (A) a statement of the specific exemption or exemptions
 38 authorizing the withholding of all or part of the public record;
 39 and

40 (B) the name and the title or position of the person responsible
 41 for the denial.

42 (d) This subsection applies to a board, a commission, a department,
 43 a division, a bureau, a committee, an agency, an office, an
 44 instrumentality, or an authority, by whatever name designated,
 45 exercising any part of the executive, administrative, judicial, or
 46 legislative power of the state. If an agency receives a request to inspect
 47 or copy a record that the agency considers to be excepted from
 48 disclosure under section 4(b)(19) of this chapter, the agency may
 49 consult with the counterterrorism and security council established by
 50 IC 10-19-8-1. If an agency denies the disclosure of a record or a part of

1 a record under section 4(b)(19) of this chapter, the agency or the
 2 counterterrorism and security council shall provide a general
 3 description of the record being withheld and of how disclosure of the
 4 record would have a reasonable likelihood of threatening the public
 5 safety.

6 (e) A person who has been denied the right to inspect or copy a
 7 public record by a public agency may file an action in the circuit or
 8 superior court of the county in which the denial occurred to compel the
 9 public agency to permit the person to inspect and copy the public
 10 record. Whenever an action is filed under this subsection, the public
 11 agency must notify each person who supplied any part of the public
 12 record at issue:

- 13 (1) that a request for release of the public record has been denied;
- 14 and
- 15 (2) whether the denial was in compliance with an informal inquiry
- 16 response or advisory opinion of the public access counselor.

17 Such persons are entitled to intervene in any litigation that results from
 18 the denial. The person who has been denied the right to inspect or copy
 19 need not allege or prove any special damage different from that
 20 suffered by the public at large.

21 (f) The court shall determine the matter de novo, with the burden of
 22 proof on the public agency to sustain its denial. If the issue in de novo
 23 review under this section is whether a public agency properly denied
 24 access to a public record because the record is exempted under section
 25 4(a) of this chapter, the public agency meets its burden of proof under
 26 this subsection by establishing the content of the record with adequate
 27 specificity and not by relying on a conclusory statement or affidavit.

28 (g) If the issue in a de novo review under this section is whether a
 29 public agency properly denied access to a public record because the
 30 record is exempted under section 4(b) of this chapter:

- 31 (1) the public agency meets its burden of proof under this
- 32 subsection by:
 - 33 (A) proving that the record falls within any one (1) of the
 - 34 categories of exempted records under section 4(b) of this
 - 35 chapter; and
 - 36 (B) establishing the content of the record with adequate
 - 37 specificity and not by relying on a conclusory statement or
 - 38 affidavit; and

- 39 (2) a person requesting access to a public record meets the
- 40 person's burden of proof under this subsection by proving that the
- 41 denial of access is arbitrary or capricious.

42 (h) The court may review the public record in camera to determine
 43 whether any part of it may be withheld under this chapter. **However,**
 44 **if the complaint alleges that a public agency denied disclosure of a**
 45 **public record by redacting information in the public record, the**
 46 **court shall conduct an in camera inspection of the public record**
 47 **with the redacted information included.**

48 (i) In any action filed under this section, a court shall award
 49 reasonable attorney's fees, court costs, and other reasonable expenses
 50 of litigation to the prevailing party if:

- 51 (1) the plaintiff substantially prevails; or

1 (2) the defendant substantially prevails and the court finds the
2 action was frivolous or vexatious.

3 The plaintiff is not eligible for the awarding of attorney's fees, court
4 costs, and other reasonable expenses if the plaintiff filed the action
5 without first seeking and receiving an informal inquiry response or
6 advisory opinion from the public access counselor, unless the plaintiff
7 can show the filing of the action was necessary because the denial of
8 access to a public record under this chapter would prevent the plaintiff
9 from presenting that public record to a public agency preparing to act
10 on a matter of relevance to the public record whose disclosure was
11 denied.

12 **(j) A court may assess a civil penalty under section 9.5 of this**
13 **chapter only if the plaintiff obtained an advisory opinion from the**
14 **public access counselor before filing an action under this section as**
15 **set forth in section 9.5 of this chapter.**

16 ~~(j)~~ **(k) A court shall expedite the hearing of an action filed under this**
17 **section.**

18 SECTION 20. IC 5-14-3-9.5 IS ADDED TO THE INDIANA CODE
19 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
20 1, 2012]: **Sec. 9.5. (a) This section does not apply to any matter**
21 **regarding:**

22 **(1) the work product of the legislative services agency under**
23 **personnel rules approved by the legislative council; or**

24 **(2) the work product of individual members and the partisan**
25 **staffs of the general assembly.**

26 **(b) As used in subsections (c) through (k), "individual" means:**

27 **(1) an officer of a public agency; or**

28 **(2) an individual employed in a management level position**
29 **with a public agency.**

30 **(c) If an individual:**

31 **(1) continues to deny a request that complies with section 3(b)**
32 **of this chapter for inspection or copying of a public record**
33 **after the public access counselor has issued an advisory**
34 **opinion:**

35 **(A) regarding the request for inspection or copying of the**
36 **public record; and**

37 **(B) that instructs the public agency to allow access to the**
38 **public record; and**

39 **(2) denies the request with the specific intent to unlawfully**
40 **withhold a public record that is subject to disclosure under**
41 **this chapter;**

42 **the individual and the public agency employing the individual are**
43 **subject to a civil penalty under subsection (h).**

44 **(d) If an individual intentionally charges a copying fee that the**
45 **individual knows exceeds the amount set by statute, fee schedule,**
46 **ordinance, or court order, the individual is subject to a civil**
47 **penalty under subsection (h).**

48 **(e) A civil penalty may only be imposed as part of an action filed**
49 **under section 9 of this chapter. A court may not impose a civil**
50 **penalty under this section unless the public access counselor has**
51 **issued an advisory opinion:**

- 1 (1) to the complainant and the public agency;
- 2 (2) that instructs the public agency to allow access to the
- 3 public record; and
- 4 (3) before the action under section 9 of this chapter is filed.

5 Nothing in this section prevents both the person requesting the
6 public record and the public agency from requesting an advisory
7 opinion from the public access counselor.

8 (f) It is a defense to the imposition of a civil penalty under this
9 section that the individual denied access to a public record in
10 reliance on either of the following:

- 11 (1) An opinion of the public agency's legal counsel.
- 12 (2) An opinion of the attorney general.

13 (g) A court may impose a civil penalty for a violation under
14 subsection (c) against one (1) or more of the following:

- 15 (1) The individual named as a defendant in the action.
- 16 (2) The public agency named as a defendant in the action.

17 (h) In an action under this section, a court may impose the
18 following civil penalties:

- 19 (1) Not more than one hundred dollars (\$100) for the first
20 violation.
- 21 (2) Not more than five hundred dollars (\$500) for each
22 additional violation.

23 A civil penalty imposed under this section is in addition to any
24 other civil or criminal penalty imposed. However, in any one (1)
25 action brought under this section, a court may impose only one (1)
26 civil penalty against an individual, even if the court finds that the
27 individual committed multiple violations. This subsection does not
28 preclude a court from imposing another civil penalty against an
29 individual in a separate action, but an individual may not be
30 assessed more than one (1) civil penalty in any one (1) action
31 brought under this section.

32 (i) A court shall distribute monthly to the auditor of state any
33 penalties collected under this section for deposit in the education
34 fund established by IC 5-14-4-14.

35 (j) An individual is personally liable for a civil penalty imposed
36 on the individual under this section. A civil penalty imposed
37 against a public agency under this section shall be paid from the
38 public agency's budget.

39 (k) If an officer of a public agency directs an individual who is
40 employed in a management level position to deny a request as
41 described in subsection (c)(1), the management level employee is
42 not subject to civil penalties under subsection (h).

43 SECTION 21. IC 5-14-4-14 IS ADDED TO THE INDIANA CODE
44 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
45 1, 2012]: **Sec. 14. (a)** An education fund is established to provide
46 funds for the program established under section 10(1) of this
47 chapter.

48 (b) The fund consists of the following:

- 49 (1) Civil penalties collected under IC 5-14-1.5-7.5 and
50 IC 5-14-3-9.5.
- 51 (2) Money appropriated by the general assembly.

1 **(3) Grants, gifts, contributions, and money received from any**
 2 **other source.**

3 **(c) The treasurer of state shall administer the fund. The**
 4 **following may be paid from money in the fund:**

5 **(1) Expenses of administering the fund.**

6 **(2) Nonrecurring administrative expenses incurred to carry**
 7 **out the purposes of this section.**

8 **(d) Money in the fund at the end of a state fiscal year does not**
 9 **revert to the state general fund.**

10 **(e) The treasurer of state shall invest the money in the fund not**
 11 **currently needed to meet the obligations of the fund in the same**
 12 **manner as other public funds may be invested. Interest that**
 13 **accrues from these investments shall be deposited in the fund.**

14 SECTION 22. IC 5-15-5.1-1 IS AMENDED TO READ AS
 15 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 1. ~~As used in~~ **The**
 16 **following definitions apply throughout** this chapter:

17 "Commission" means the commission on public records created by
 18 this chapter.

19 "Record" means all documentation of the informational,
 20 communicative, or ~~decisionmaking~~ **decision making** processes of state
 21 government, its agencies and subdivisions made or received by any
 22 agency of state government or its employees in connection with the
 23 transaction of public business or government functions, which
 24 documentation is created, received, retained, maintained, or filed by
 25 that agency or its successors as evidence of its activities or because of
 26 the informational value of the data in the documentation, and which is
 27 generated on:

28 (1) paper or paper substitutes;

29 (2) photographic or chemically based media;

30 (3) magnetic, **electronic**, or machine readable media; or

31 (4) any other materials, regardless of form or characteristics.

32 "Nonrecord materials" means all identical copies of forms, records,
 33 reference books, and exhibit materials which are made, or acquired,
 34 and preserved solely for reference use, exhibition purposes, or
 35 publication and which are not included within the definition of record.

36 "Personal records" means:

37 (1) all documentary materials of a private or nonpublic character
 38 which do not relate to or have an effect upon the carrying out of
 39 the constitutional, statutory, or other official or ceremonial duties
 40 of a public official, including: diaries, journals, or other personal
 41 notes serving as the functional equivalent of a diary or journal
 42 which are not prepared or utilized for, or circulated or
 43 communicated in the course of, transacting government business;
 44 or

45 (2) materials relating to private political associations, and having
 46 no relation to or effect upon the carrying out of constitutional,
 47 statutory, or other official or ceremonial duties of a public official
 48 and are not deemed public records.

49 "Form" means every piece of paper, transparent plate, or film
 50 containing information, printed, generated, or reproduced by whatever
 51 means, with blank spaces left for the entry of additional information to

- 1 be used in any transaction involving the state.
- 2 "Agency" means any state office, department, division, board,
3 bureau, commission, authority, or other separate unit of state
4 government established by the constitution, law, or by executive or
5 legislative order.
- 6 "Public official" means:
- 7 (1) an individual holding a state office created by the Constitution
8 of Indiana, by act or resolution of the general assembly, or by the
9 governor;
- 10 (2) all officers of the executive and administrative branch of state
11 government; and
- 12 (3) all other officers, heads, presidents, or chairmen of agencies
13 of state government.
- 14 "Indiana state archives" means the program maintained by the
15 commission for the preservation of those records and other government
16 papers that have been determined by the commission to have sufficient
17 permanent values to warrant their continued preservation by the state.
- 18 "Forms management" means the program maintained by the
19 commission to provide continuity of forms design procedures from the
20 form's origin up to its completion as a record by determining the:
- 21 (1) form's size, style, and size of type;
- 22 (2) format;
- 23 (3) type of construction;
- 24 (4) number of plies;
- 25 (5) quality, weight and type of paper and carbon; and ~~by~~
26 ~~determining the~~
- 27 (6) use of the form for data entry as well as the distribution.
- 28 "Information management" means the program maintained by the
29 commission for the application of management techniques to the
30 purchase, creation, utilization, maintenance, retention, preservation,
31 and disposal of forms and records undertaken to improve efficiency and
32 reduce costs of recordkeeping, including management of filing and
33 microfilming equipment and supplies, filing and information retrieval
34 systems, files, correspondence, reports and forms management,
35 historical documentation, micrographic retention programming, and
36 critical records protection.
- 37 "Records center" means a program maintained by the commission
38 primarily for the storage, processing, retrieving, servicing, and security
39 of government records that must be retained for varying periods of time
40 but should not be maintained in an agency's office equipment or space.
- 41 "Critical records" means records necessary to:
- 42 (1) resume or continue governmental operations;
- 43 (2) the reestablishing of the legal and financial responsibilities of
44 government in the state; or ~~to~~
- 45 (3) protect and fulfill governmental obligations to the citizens of
46 the state.
- 47 "Retention schedule" means a set of instructions prescribing how
48 long, where, and in what form a record series shall be kept.
- 49 "Records series" means documents or records that are filed in a
50 unified arrangement and having similar physical characteristics or

1 relating to a similar function or activity.

2 "Records coordinator" means a person designated by an agency to
3 serve as an information liaison person between the agency and the
4 commission.

5 SECTION 23. IC 21-9-4-5 IS AMENDED TO READ AS
6 FOLLOWS [EFFECTIVE JANUARY 1, 2013]: Sec. 5. (a) Five (5)
7 members of the board are a quorum for:

- 8 (1) the transaction of business at a meeting of the board; or
9 (2) the exercise of a power or function of the authority.

10 (b) This subsection applies to a meeting of the board at which at
11 least five (5) members of the board are physically present at the place
12 where the meeting is conducted. A member of the board may
13 participate in a meeting of the board by using a means of
14 communication that permits:

- 15 (1) the member;
16 (2) all other members participating in the meeting; and
17 (3) all members of the public physically present at the place
18 where the meeting is conducted;

19 to simultaneously communicate with each other during the meeting. A
20 member who participates in a meeting described in this subsection is
21 considered to be present at the meeting. If a meeting is held under this
22 subsection, the memoranda of the meeting prepared under
23 IC 5-14-1.5-4 must state the name of each member who was physically
24 present at the place where the meeting was conducted; who participated
25 in the meeting by using a means of communication described in this
26 subsection; and who was absent from the meeting.

27 (c) (b) The affirmative vote of a majority of all the members of the
28 board who are present is necessary for the authority to take action. A
29 vacancy in the membership of the board does not impair the right of a
30 quorum to exercise all the rights and perform all the duties of the
31 authority. An action taken by the board under this article may be
32 authorized by:

- 33 (1) resolution at any regular or special meeting; or
34 (2) unanimous consent of all the members who have not
35 abstained.

36 A resolution takes effect immediately upon adoption and need not be
37 published or posted.

38 (d) (c) The board shall meet at the call of the chairman and as
39 provided in the bylaws of the authority.

40 (e) (d) Meetings of the board may be held anywhere in Indiana.

41 SECTION 24. IC 21-22-3-5 IS REPEALED [EFFECTIVE
42 JANUARY 1, 2013]. Sec. 5: (a) This section applies to a meeting of the
43 state board or a committee of the state board at which at least a quorum
44 of the board or the committee is physically present at the place where
45 the meeting is conducted.

46 (b) A member of the state board or a committee of the state board
47 may participate in a meeting of the state board or a committee of the
48 state board by using a means of communication that permits:

- 49 (1) all other members participating in the meeting; and
50 (2) all members of the public physically present at the place

1 where the meeting is conducted;
 2 to simultaneously communicate with each other during the meeting.
 3 (e) A member who participates in a meeting by using a means of
 4 communication described in subsection (b) is considered to be present
 5 at the meeting.
 6 (d) The memoranda of the meeting prepared under IC 5-14-1.5-4
 7 must state the name of:
 8 (1) each member who was physically present at the place where
 9 the meeting was conducted;
 10 (2) each member who participated in the meeting by using a
 11 means of communication described in subsection (b); and
 12 (3) each member who was absent.
 13 SECTION 25. IC 21-25-3-8 IS REPEALED [EFFECTIVE
 14 JANUARY 1, 2013]. Sec. 8: (a) This section applies to a meeting of the
 15 board of trustees or a committee of the board of trustees at which at
 16 least a quorum of the board or the committee is physically present at
 17 the place where the meeting is conducted.
 18 (b) A member of the board or a committee of the board may
 19 participate in a meeting of the board or the committee by using a means
 20 of communication that permits:
 21 (1) all other members participating in the meeting; and
 22 (2) all members of the public physically present at the place
 23 where the meeting is conducted;
 24 to simultaneously communicate with each other during the meeting.
 25 (c) A member who participates in a meeting by using a means of
 26 communication described in subsection (b) is considered to be present
 27 at the meeting.
 28 (d) The memoranda of the meeting prepared under IC 5-14-1.5-4
 29 must state the name of:
 30 (1) each member who was physically present at the place where
 31 the meeting was conducted;
 32 (2) each member who participated in the meeting by using a
 33 means of communication described in subsection (b); and
 34 (3) each member who was absent.
 35 SECTION 26. IC 21-27-2-2 IS REPEALED [EFFECTIVE
 36 JANUARY 1, 2013]. Sec. 2: (a) This section applies to a meeting of:
 37 (1) the board of trustees or a committee of the board of trustees of
 38 any state educational institution (as defined in IC 21-7-13-32); or
 39 (2) the commission for higher education established under
 40 IC 21-18-2-1.
 41 (b) A member of the board of trustees or the commission for higher
 42 education may participate in a meeting of the board or commission:
 43 (1) at which at least a quorum is physically present at the place
 44 where the meeting is conducted; and
 45 (2) by using a means of communication that permits:
 46 (A) all other members participating in the meeting; and
 47 (B) all members of the public physically present at the place
 48 where the meeting is conducted;
 49 to simultaneously communicate with each other during the
 50 meeting.

1 (c) A member of a committee of the board of trustees may
 2 participate in a committee meeting by using a means of communication
 3 that permits:

4 (1) all other members participating in the meeting; and

5 (2) all members of the public physically present at the place
 6 where the meeting is conducted;

7 to simultaneously communicate with each other during the meeting.

8 (d) A member who participates in a meeting under subsection (b) or
 9 (c) is considered to be present at the meeting.

10 (e) The memoranda of the meeting prepared under IC 5-14-1.5-4
 11 must state the name of:

12 (1) each member who was physically present at the place where
 13 the meeting was conducted;

14 (2) each member who participated in the meeting by using a
 15 means of communication described in subsection (b) or (c); and

16 (3) each member who was absent.

17 SECTION 27. IC 22-4-18.1-6.5 IS REPEALED [EFFECTIVE
 18 JANUARY 1, 2013]. Sec. 6.5: (a) This section applies to a meeting of
 19 the council at which at least half of the members appointed to the
 20 council are physically present at the place where the meeting is
 21 conducted.

22 (b) A member of the council may participate in a meeting of the
 23 council using a means of communication that permits:

24 (1) all other members of the council participating in the meeting;
 25 and

26 (2) all members of the public physically present at the place
 27 where the meeting is conducted;

28 to simultaneously communicate with each other during the meeting.

29 (c) A member who participates in a meeting under subsection (b) is
 30 considered to be present at the meeting and may vote on any matter
 31 properly presented during the meeting.

32 (d) A member who participates in a meeting under subsection (b)
 33 shall confirm in writing not more than five (5) days after the date of the
 34 meeting the votes cast by the member during the meeting. The member
 35 may send the confirmation by United States mail or facsimile.

36 (e) A member shall attend at least three (3) meetings of the council
 37 during a calendar year in person.

38 (f) The memorandum of the meeting prepared under IC 5-14-1.5-4
 39 must also state the name of each member who:

40 (1) was physically present at the place where the meeting was
 41 conducted;

42 (2) participated in the meeting using a means of communication
 43 described in subsection (b); and

44 (3) was absent.

45 SECTION 28. IC 25-1-14 IS REPEALED [EFFECTIVE JANUARY
 46 1, 2013]. (Meetings).

47 SECTION 29. IC 25-37.5-1-2, AS AMENDED BY P.L.158-2009,
 48 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 49 JULY 1, 2012]: Sec. 2. (a) Except as provided in section 5 of this
 50 chapter, every valuable metal dealer in this state shall enter on forms

1 provided **under section 6 of this chapter** by the state police
 2 department for each purchase of valuable metal the following
 3 information:

- 4 (1) The name and address of the dealer.
- 5 (2) The date and place of each purchase.
- 6 (3) The name, address, age, and driver's license number or Social
 7 Security number of the person or persons from whom the valuable
 8 metal was purchased.
- 9 (4) The valuable metal dealer shall verify the identity of the
 10 person from whom the valuable metal was purchased by use of a
 11 government issued photographic identification. The dealer shall
 12 enter on the form the type of government issued photographic
 13 identification used to verify the identity of the person from whom
 14 the valuable metal was purchased, together with the:
 - 15 (A) name of the government agency that issued the
 16 photographic identification; and
 - 17 (B) identification number present on the government issued
 18 photographic identification.
- 19 (5) The motor vehicle license number of the vehicle or
 20 conveyance on which the valuable metal was delivered to the
 21 dealer.
- 22 (6) The price paid for the metal.
- 23 (7) A description and weight of the valuable metal purchased.
- 24 (8) The source of the valuable metal.
- 25 (9) The photograph described in subsection (b).

26 After entering the information required in this subsection, the valuable
 27 metal dealer shall require the person or persons from whom the
 28 valuable metal is purchased to sign the form and verify its accuracy.

29 (b) In addition to collecting the information described in subsection
 30 (a), a valuable metal dealer shall take a photograph of:

- 31 (1) the person from whom the valuable metal is being purchased;
 32 and
- 33 (2) the valuable metal.

34 (c) A valuable metal dealer shall make and retain a copy of the
 35 government issued photographic identification described under
 36 subsection (a)(4) used to verify the identity of the person from whom
 37 valuable metal was purchased and the photograph described in
 38 subsection (b). However, a valuable metal dealer is not required to
 39 make a copy of a government issued photographic identification used
 40 under subsection (a)(4) to verify the identity of the person from whom
 41 valuable metal is purchased if the valuable metal dealer has retained a
 42 copy of a person's government issued photographic identification from
 43 a prior purchase from the person by the valuable metal dealer.

44 (d) The completed form, the photograph described in subsection (b),
 45 and the copy of the government issued photographic identification
 46 described in subsection (c) shall be kept in a separate book or register
 47 by the dealer and shall be retained for a period of two (2) years. This
 48 book or register shall be made available for inspection by any law
 49 enforcement official at any time.

50 (e) A valuable metal dealer may not accept a damaged or an

1 undamaged metal beer keg if either of the following applies:

2 (1) The keg is clearly marked as the property of a brewery
3 manufacturer.

4 (2) The keg's identification markings have been made illegible.

5 SECTION 30. IC 25-37.5-1-3, AS AMENDED BY P.L.158-2009,
6 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
7 JULY 1, 2012]: Sec. 3. The superintendent of the state police
8 department may adopt rules under IC 4-22-2 as may be necessary to
9 administer and enforce the provisions and intent of this chapter. The
10 superintendent shall also prepare and distribute a list to each valuable
11 metal dealer describing valuable metal products that are particularly
12 susceptible to theft.

13 SECTION 31. IC 25-37.5-1-6 IS AMENDED TO READ AS
14 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 6. The state police
15 department shall prepare the forms provided for in section 2 of this
16 chapter; shall make a reasonable supply of the forms available at the
17 office of the county sheriff of each county and shall provide the forms
18 to any individual upon request: **publish the following on the state
19 police Internet web site:**

20 (1) **The forms described in section 2(a) of this chapter to be
21 used by valuable metal dealers when purchasing valuable
22 metal.**

23 (2) **A list that describes valuable metal products that are
24 particularly susceptible to theft.**

25 (3) **The:**

26 (A) **statutes; and**

27 (B) **rules adopted by the superintendent of the state police
28 department under section 3 of this chapter;**

29 **concerning the regulation of valuable metal dealers.**

30 SECTION 32. IC 28-11-1-9.1, AS AMENDED BY HEA 1239-2012
31 SECTION 107, IS REPEALED [EFFECTIVE JANUARY 1, 2013]:
32 Sec. 9.1: (a) Subject to the policies adopted by the members governing
33 the conduct of meetings; this section applies to all meetings of the
34 members:

35 (b) A member may participate in a meeting of the members by using
36 a means of communication that permits:

37 (1) all other members participating in the meeting; and

38 (2) all members of the public physically present at the place
39 where the meeting is conducted;

40 to simultaneously communicate with each other during the meeting:

41 (c) A member who participates in a meeting under subsection (b) is
42 considered to be present at the meeting for all purposes, including
43 establishing a quorum and voting on all matters to come before the
44 members:

45 (d) The memoranda of the meeting prepared under IC 5-14-1.5-4
46 must state the name of each member who:

47 (1) was physically present at the place where the meeting was
48 conducted;

49 (2) participated in the meeting by using a means of
50 communication described in subsection (b); and

51 (3) was absent.

1 SECTION 33. IC 31-26-6-13 IS REPEALED [EFFECTIVE
2 JANUARY 1, 2013]. Sec. 13. (a) This section applies to a meeting of
3 a regional services council at which at least four (4) voting members of
4 the council are physically present at the place where the meeting is
5 conducted.

6 (b) A member of the regional services council may participate in a
7 meeting of the council by using a means of communication that allows:

8 (1) all other members participating in the meeting; and

9 (2) all members of the public physically present at the place
10 where the meeting is conducted;

11 to communicate simultaneously with each other during the meeting.

12 (c) A member who participates in a meeting under subsection (b) is
13 considered to be present at the meeting.

14 (d) The memoranda of the meeting prepared under IC ~~5-14-1.5-4~~
15 must state the name of each member who:

16 (1) was physically present at the place where the meeting was
17 conducted;

18 (2) participated in the meeting by using a means of
19 communication described in subsection (b); or

20 (3) was absent.

21 SECTION 34. IC 34-30-2-14.1 IS ADDED TO THE INDIANA
22 CODE AS A NEW SECTION TO READ AS FOLLOWS
23 [EFFECTIVE JULY 1, 2012]: **Sec. 14.1. IC 5-14-1.5-7.5 (Concerning**
24 **a public employee who, acting on the orders of a superior or on the**
25 **advice of the agency attorney or the attorney general, fails to**
26 **provide proper notice of a public meeting or executive session).**

27 SECTION 35. IC 34-30-2-14.2 IS ADDED TO THE INDIANA
28 CODE AS A NEW SECTION TO READ AS FOLLOWS
29 [EFFECTIVE JULY 1, 2012]: **Sec. 14.2. IC 5-14-3-9.5 (Concerning**
30 **a public employee who, acting on the orders of a superior or on the**
31 **advice of the agency attorney or the attorney general, denies or**
32 **interferes with a person's request for inspection or copying of a**
33 **public record).**

(Reference is to EHB 1003 as reprinted February 17, 2012.)

Conference Committee Report
on
Engrossed House Bill 1003

Signed by:

Representative Crouch
Chairperson

Senator Holdman

Representative Dobis

Senator Arnold

House Conferees

Senate Conferees